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RR RUEHDBU RUEHLN RUEHSK RUEHVK RUEHYG
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ZNR UUUUU ZZH
R 170505Z FEB 09
FM AMEMBASSY BAKU
TO RUEHC/SECSTATE WASHDC 0773
RUEHAK/AMEMBASSY ANKARA 3252
RUEATRS/DEPT OF TREASURY WASHDC
RUEAWJA/DEPT OF JUSTICE WASHDC//OPDAT PRIORITY
RUEHVEN/USMISSION OSCE VIENNA AU
RUEHBS/USEU BRUSSELS
RUCNCIS/CIS COLLECTIVE

UNCLAS SECTION 01 OF 02 BAKU 000128

SIPDIS

DEPT FOR INL - JCAMPBELL
DEPT FOR EUR/ACE AND EUR/CARC
DOJ/OPDAT FOR ALEXANDRE/NEWCOMBE

E.O. 12958: N/A

TAGS: [EFIN](#) [SNAR](#) [KJUS](#) [OTRA](#) [KCRM](#) [KCOR](#) [AJ](#)

SUBJECT: AZERBAIJAN PASSES MONEY LAUNDERING/TERRORIST FINANCING LAW

¶1. SUMMARY: On February 10, 2009, the Azerbaijani Parliament passed an Anti-Money Laundering (AML)/Counter-Terrorist Financing (CTF) law during the law's third Parliamentary reading. The next step in formalizing the law is for President Aliyev to sign it. This is a step forward in Azerbaijan's effort to address Council of Europe concerns regarding the GOAJ's lack of progress in meeting its responsibilities in the fight against transnational crime and terrorism. However, the penultimate draft of the law (second reading) contained major deficiencies, with MONEYVAL rating 42 out of 49 assessment categories as partially or non compliant. Working with FATF experts, the GOAJ made last minute changes to the final text which is still being reviewed by MONEYVAL. The Finance Minister on February 13 asserted that FATF experts had approved the third reading draft as being consistent with FATF standards before it was passed. He said that when the President signs the law he will concurrently issue a decree naming the implementing agency where the FIU will be located. End Summary.

¶2. Azerbaijan has been under significant pressure from the Council of Europe (COE) and MONEYVAL, as well as the USG, over its lack of progress in finalizing and implementing anti-money laundering legislation. Azerbaijan drew criticism from MONEYVAL as the only MONEYVAL country that did not have a comprehensive Anti-Money Laundering/Counter-Terrorist Financing (AML/CTF) law and a Financial Intelligence Unit (FIU) in place. MONEYVAL was concerned that the GOAJ had done nothing to implement its provisions since ratifying the Terrorist Financing Convention. In June 2008, during Parliament's first reading of the draft law, it was deemed deficient in almost all major FATF standards. With assistance from the USG and COE, the GOAJ amended the law slightly. In December 2008, MONEYVAL issued a final demand that Azerbaijan pass a money laundering law compliant with FATF standards. COE planned to ask FATF to impose administrative warnings at the February 23-27, 2009 Plenary if Azerbaijan failed to follow through. The COE believes that these administrative warnings could eventually lead to sanctions, such as freezing assets in international bank accounts on behalf of Azerbaijani commercial banks.

¶3. Because of the endemic corruption in all strata of the Azerbaijani government, the existence and location of a financial intelligence unit (FIU), which would be privy to sensitive information, has been a source of great controversy within Azerbaijan. There were strong objections by many bankers, businessmen, and government officials to providing their financial data to law enforcement, given widespread corruption. This attitude runs contrary to the suspicious activity reporting and FIU requirements of UN Security Council Resolution 1373 and FATF Special 9 Recommendations on Terrorist Financing.

¶4. In a significant change to the third reading draft, the GOAJ inserted the mandatory "suspicious transaction" and "know your customer" requirements, which monitoring agencies would need to

report to an FIU. Once constituted, the FIU would be responsible for providing a list of directives and examples to all banks and other financial institutions as to what constitutes a "suspicious" transaction. The current law requires commercial banks to ensure identification of all entities opening an account, all representatives who are vested with the authority to open or use that account, and any third person whose name is on the account being opened.

¶5. Although many of the USDOJ and COE recommendations were not adopted before the third reading, the partially revised and somewhat improved ANL/CTF law was passed on February 10, 2009. The law considers all crimes listed in the Criminal Procedure Code as predicate crimes to the crime of money laundering. Specifically, this includes corruption and terrorism offenses. Prior to this new law the Criminal Procedure Code of Azerbaijan criminalized the act of money laundering, although both this statute and corresponding asset forfeiture provisions could still use some improvement, especially in allowing for criminalization of "promoting" (versus just "concealing") the underlying crime and allowing "in rem" forfeiture.

¶6. The new law requires banks, NGOs, religious organizations, insurance companies, and notaries, among others, to report all cash transactions over an amount to be later determined by the FIU. A major weakness in the law, however, is that it does not provide for criminal penalties against monitoring agencies for failure to report suspicious transactions, nor to report cash transactions over the FIU specified limit.

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¶7. As a result of the law, the FIU would have the power to freeze any suspicious transactions and then refer the case to the prosecutor's office. Upon court order, the suspicious transaction could be frozen pending trial. Unfortunately, there are no provisions in the law that subject FIU or prosecutorial employees to criminal and/or civil penalties for improperly releasing confidential financial information. The law states that a "system for protection" is to be created later.

¶8. This AML/CTF law was drafted by a Presidential Working Group, including, inter alia, officials from the National Bank. Embassy's DOJ OPDAT Resident Legal Advisor (RLA) provided continued support and advice over this three year process. When the law was stalled after the first reading, the RLA held an INL funded seminar for the President's Working Group and Members of Parliament. During this seminar, the RLA elaborated on areas of improvement, and drove home the message that the draft law was deficient, needed to be improved, and needed to be passed. The high-profile importance of this issue was emphasized by including the press, NGOs, and other executive branch officials. Follow-up was conducted through individual meetings with the President's Working Group and Members of Parliament.

¶9. Finance Minister Sharifov told the Ambassador on February 13 that the third reading draft of the law had been prepared in direct consultation with FATF experts and that he is confident the law meets FATF standards. He said that when the President signs the bill into law, he will concurrently issue a decree which identifies the implementing agency where the FIU will be located.

¶10. Comment: The passage of the new AML/CTF law, which has been highly controversial, is a significant step. The final draft is a significant improvement from the first reading draft. At the same time, many provisions remain problematic, including listed restrictions on the FIU, the requirement of judicial approval for release of further financial information to a prosecutor, and the mechanics of the suspicious transactions reporting system. Rapid GOAJ action to fund and implement the FIU and the FIU's issuance of adequate regulations covering suspicious transactions will likely be necessary for the law to pass muster in MONEYVAL and/or FATF. The National Bank and Parliament drafters who prepared the law and worked for its passage are aware of this, but state that this law is the best they could currently pass through Parliament. We believe we should await MONEYVAL and FATF's assessments and then determine

next steps, including how we can best press for/support early establishment of the FIU and rapid implementation of the law. End Comment.

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